IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3152 of 1991

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JINABHAI JAYRAMBHAI BARAIYA

Versus

A'BAD MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 3152 of 1991

MR VB GHARANIYA for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1-2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 26/11/2004

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner has prayed that his service condition as Mukadam with the

respondent-Corporation be protected and he may be allowed to serve as Mukadam by quashing and setting aside the oral reversion order dated 25th February 1991, whereby, the petitioner was reverted from the post of Mukadam to Majdoor.

2. It is the case of the petitioner that, in the year 1962, the petitioner was appointed as Majdoor and, though no written order was given to the petitioner for appointment to the post of Mukadam, the petitioner worked from 1962 to 25th February 1991 on the post of Mukadam, and the work, which was performed by the petitioner, was of Mukadam. Therefore, the petitioner has also claimed salary of Mukadam for the said period from the year 1962 to 25th February 1991.

2.1 The petitioner has challenged the oral order of reversion. It is contended that the petitioner was reverted to the post of Majdoor without giving any opportunity of hearing, and the petitioner, being a senior employee of the respondent-Corporation, was reverted by the respondent-Corporation in an arbitrary manner. The petitioner has, further, claimed that the petitioner has the experience of about 29 years of service for the work of Mukadam and, therefore also, he has to be regularised on the post of Mukadam and to be paid his salary accordingly.

3. The Court issued Rule on 30th April 1991 and, by way of interim relief, it was ordered that the status-quo was to be maintained till the returnable date, i.e. 24th June 1991. The said order of interim relief was, thereafter, ordered to be continued till final disposal of the petition vide order dated 25th June 1991.

4. When this matter is called out today for final hearing, and also on earlier occasions, the learned advocate for the petitioner has not remained present. So also, no counter reply is filed by the respondent-Corporation disputing the claims of the petitioner with regard to discharge of his duties as an employee of the respondent-Corporation on the post of Mukadam.

5. Having gone through the record produced in this petition, it is borne out that the petitioner has performed dual duties as Majdoor and also as Mukadam and it is further stated that the petitioner is performing the duties on the post of majdoor/mukadam as per the Annexure "A" dated 24th July 1986. The petitioner has also made a representation to the respondent-Authority to

continue him as Mukadam and an appropriate order was requested to be passed by the Authority accordingly.

6. In the facts and circumstances of the case, the respondents are directed to consider the case of the petitioner in view of the length of service of about 29 years rendered by the petitioner on the date of filing of the petition and, thereafter also. If the petitioner makes a representation with regard to his claim for regularisation of the post of Mukadam and for salary commensurate to the post of Mukadam as available under the Rules and Regulations of the Corporation, within the period of three months from today, the respondents shall consider the same within three months thereafter, and will pass appropriate orders in accordance with law.

7. With the above observation and direction, Rule is made absolute to the aforesaid extent. The interim relief, if any, shall continue till the decision on the representation by the respondents-Authorities. There shall be no order as to costs.

(Anant S. Dave, J.)
(swamy)